

Village of Phoenix
Public Hearing
Tuesday, May 3, 2016 at 8:08 PM
Sweet Memorial Building
455 Main Street, Phoenix, NY 13135

Present:	Mayor Ryan Wood	Attorney Steve Primo
	Trustee Jennifer Burgess	Clerk Roxanne Demo
	Trustee Andrew Bittel	Administrator James Lynch
	Trustee David Pendergast	
	Trustee Eric Shaffer II	

4 Public in Attendance

PLEASE TAKE NOTICE that a Public Hearing will be held by the Village Board of the Village of Phoenix on the 3rd day of May, 2016 at 6:50 P.M. at the Sweet Memorial Building, 455 Main St. Phoenix, New York to consider the following:

The exercise of Village sovereign jurisdiction relative to zoning, planning and permitting of the proposed Metropolitan Water Board supply connection and booster pump station project to be located at County Route 12, Town of Schroepfel and adoption of resolution relative to same.

The foregoing is an Type II Action pursuant to the State Environmental Quality Review Act (SEQRA). Parties may appear at the hearing in person or by agent.

BY ORDER OF THE
VILLAGE BOARD

s/Roxanne Demo

Roxanne Demo
Village Clerk-Treasurer

Dated: April 21, 2016

Mayor Ryan Wood said if we have no objection from the public I'd like have a motion to waive the reading of the notice and have Attorney Primo explain what the hearing is about. Motion was made by Trustee Burgess, seconded by Trustee Pendergast. All ayes. Attorney Primo then explained in some detail the purpose of the hearing and details in the proposed resolution. The following reflects the detail of same and including any board inquiries or comments during the hearing and following same.

**IN THE MATTER
OF
DETERMINATION OF ZONING, PLANNING,
PERMITTING, AND RELATED
JURISDICTIONAL AUTHORITY RELATIVE TO
THE PROPOSED VILLAGE OF PHOENIX,
METROPOLITAN WATER BOARD, COUNTY
ROUTE 12 SUPPLY CONNECTION AND
BOOSTER PUMP PROJECT**

RESOLUTION

The **VILLAGE BOARD OF THE VILLAGE OF PHOENIX**, in the County of Oswego, State of New York, met in regular session at the Sweet Memorial Building in the Village of Phoenix, Oswego County located at the Sweet Memorial Building, Main St. Village of Phoenix, New York on the 3rd day of May, 2016, at 8:12 p.m.

The meeting was called to order by Ryan Wood, Mayor and the following were present, namely:

Ryan Wood	Mayor
David Pendergast	Trustee
Eric Shaffer, II	Trustee
Andrew Bittel	Trustee
Jennifer Burgess	Trustee

Absent:

Also Present:

Roxanne Demo, Village Clerk-Treasurer
Jim Lynch, Village Administrator
Steven J. Primo, Village Attorney
Doug Miller, Village Engineer

The following resolutions were moved, seconded and adopted:

WHEREAS, the existing Village of Phoenix (“Village”) well water supply (from the Foster Wells #1 and #3 located in the Town of Schroepfel) is subject to the federal Surface Water Treatment Rule which requires that all public water systems using surface water, or having groundwater under the direct influence of surface water, meet performance standards of filtration and disinfection to deactivate pathogenic organisms within the water, and the Oswego County Health Department having issued a determination in 2011 that the Village water supply from the Foster 1 and 3 wells were in violation of same, known as a “GWUDI”; and

WHEREAS, the Village of Phoenix Board of Trustees (“Village Board”) having commissioned the Village Engineer to study and report as to, and having upon receipt of such report in 2013, having then studied, various options for addressing the 2011 Oswego County Health Department determination. Options included remediation work on the existing well system and surrounding areas of groundwater infiltration condition, installation of a filtration system and drilling of a new well system however well to be located in the same general area as the existing well systems. And after careful consideration of such alternatives, the respective viability and costs of each, and including specifically consideration that connection to a public water supply system would require ongoing payment for a water supply source that historically, water customers of the Village had not paid for, determined that the best possible alternative would be to proceed with a water supply connection project to the existing Metropolitan Water Supply System (“MWB”) main; and

WHEREAS, sources of financing/funding of the total Project cost has been of serious concern to the Village Board; together with such other annual property tax, refuse, water and sewer use and existing capital projects debt service, total annual obligations for Village taxpayers in the Village would now upon completion of the Project also include a payment obligation for purchase of a water supply the Village has historically not had to pay for; as a result, in connection with the Project the Village has prepared or is in the process of preparation and submission of completed applications and supporting documents seeking approvals/commitments for New York State funding, through the NY Water Grants Program (for 60% of the total Project cost) and through the Environmental Facilities Corporation administered New York State Drinking Water State Revolving Fund Program (for the remaining 40%). For interim funding including for completion of preliminary work necessary to determine the Project would be the most appropriate of those alternative GWUDI remedies studied, and also because the Village was advised same was necessary to evidence the Village’s commitment to resolving its two major (water and sanitary sewer/wastewater treatment) violations the latter having even longer existed, the Village Board adopted a serial bond authorization resolution on November 1, 2011, with considerable reserve due to the anticipated increased financial burden, generally authorized sewer/wastewater treatment and water projects to continue through design and construction, and to evidence the commitment to close any gap as between total project costs and any agency funding assistance, (a) serial bond(s) of the Village sized at \$3,200,000 such that interim bond anticipation notes of the Village could be issued as preliminary and interim project costs were incurred subject to reimbursement from any funding agency assistance. Of this, the sum of up to \$800,000.00+/- was to be allocated for a Village project relative to the Village GWUDI issue. The remainder was allocated toward existing wastewater treatment and sanitary/storm sewer issues as required under a 2011 NYSDEC Consent Decree resulting from a history of SPDES permitting and sanitary sewer overflow violations and negotiations commencing in 2007. The Village Board thereafter was required to increase the scope of the sanitary sewer and wastewater project to include even more comprehensive studies, and potentially a substantially greater scope of repairs and replacements of existing sanitary sewer infrastructure, and as such adopted a second bond resolution on January 25, 2013 amending, replacing and increasing the original bond issuance authorization to \$6,900,000. As with the aforementioned Project funding applications, the Village sought and received commitments for both 0% interest EFC financing and substantial grant commitments for this NYSDEC mandated work and is in hope that similar funding commitments will assist Village taxpayers with the additional financial burden of bringing its water and sewer infrastructure into compliance to

future taxpayers will not induce a gradual exodus of Village and some residents and businesses to escape the additional financial burdens; although such bond financing authorizations warranted and required a Type II determination respecting the applicability of SEQRA, at the early stages of estimating project costs and authorization, the purposes then intended were to issue bond anticipation notes to finance the further study and related research as to implementation of the appropriate remedy; and

WHEREAS, the Project is substantially as depicted on Attachment “A” consisting of three (3) pages same being the plans and specifications for the Project, the Project involves disconnecting the existing County Route 12 Village water transmission and distribution system, from the Village well system, decommissioning of the wells and construction, to the existing unused MWB 54” supply line via the existing 12” outlet supply line and valve located at County Route 12 near the Interstate 481 underpass, and a 435 sq. ft. +/- booster pump station will be constructed for additional pressure and rechlorination approximately 15+/- feet from the MWB main supply outlet and valve and 35+/- feet from the existing County Route 12 transmission line connection point (“Project”); and

WHEREAS, the Project is to be constructed on a less than half acre site located entirely within existing MWB easements within the Town of Schroepfel (“Town”) approximately ½ mile outside the territorial boundary lines of the Village; and

WHEREAS, the Project and related funding actions hereinbefore described comprise the “Action” for purposes of SEQRA review;

WHEREAS, on the 15th day of March 2016, at a regular meeting of the Village Board, the Village Board adopted (a) revised (new) resolution(s) relating to the Action pursuant to SEQRA designating same as a Type II Action thus requiring no further SEQRA review, and also to address and authorize any other Project related manners; and

WHEREAS, because the Project relates to a public water supply system, the proposed plans and specifications and related technical and legal requirements applicable to its design, construction and operation have been subject to review by both the New York State and Oswego County Health Departments and by the Oswego County Department of Law; and

WHEREAS, such review has resulted in several rounds of agency comments and responses from the Village through its Village Engineer, such that once same are finally approved any required zoning, planning, subdivision and permitting authority is solely through the local governmental agency having jurisdiction over the Project.

WHEREAS, the Village Board this date, desires to consider asserting sovereign authority respecting any zoning, planning, subdivision and building/construction review, approval and permitting authority over the Project, and accordingly, to apply the balancing test criteria set forth in the New York Court of Appeals 1988 case of *Matter of County of Monroe v. City of Rochester*, 72 N.Y.2d 338, RSE (“Monroe County”) in order to make the requisite “balancing of the public interests” between the Village of Phoenix and Town of Schroepfel, and to resolve and determine whether the Village has sufficient municipal sovereign power to supersede the Town’s zoning, subdivision, site planning and related land use laws and regulations, and declaring its

intent to proceed with the Project without subjecting itself to the Town's jurisdiction over the issuance of building and construction permits; and

WHEREAS, in applying the standards and criteria established in Monroe County as a starting point it is acknowledged that unless a statute exempts it, the encroaching government (here the Village) is presumed to be subject to the zoning regulations of the host (Town of Schroepel) government where the land is located, however under certain circumstances some local governments may have limited immunity from the host government's zoning regulations; and

WHEREAS, in making a determination as to whether the contemplated actions of the Village are exempt from the Town's local zoning regulations, the "balancing of public interests" analytic approach established by Monroe County case establishes nine (9) factors to consider in determining whether or not it is in the public interest to continue to subject the Village to the Town's land use regulations, same being the following:

1. The nature and scope of the instrumentality seeking immunity;
2. The encroaching government's legislative grant of authority;
3. The kind of function or land use involved;
4. The effect local land use regulation would have upon the enterprise concerned;
5. Alternative locations for the facility in less restrictive zoning areas;
6. The impact upon legitimate local interest;
7. Alternative methods of providing the proposed improvement;
8. The extent of the public interest to be served by the improvements; and
9. Intergovernmental participation in the project development process and an opportunity to be heard; and

WHEREAS, application of this criteria allows for the consideration of results likely to occur if such sovereign authority immunity were granted, and not simply evaluating the sources of power and authority of the competing agencies; and

WHEREAS, as aforementioned, the Village Board having previously concluded the Action comprised of the Project and related actions are SEQRA Type II and having discussed at prior meetings generally and briefly the criteria to be considered and having received copies of this draft resolution several days in advance of this date, has prior hereto this evening conducted a public hearing for the specific purpose of thereafter determining zoning, planning, subdivision permitting and related jurisdictional issues in relation to the Project by evaluating the balancing test established by Monroe County; Village Board Members having considered same and having heard and or read all relevant public and agency comments; and

WHEREAS, the Village Board Members having acknowledged their review and understanding of the within proposed resolution and the Town and Villages respective interests and Village Administrator Lynch having requested clarification on the overall objective in the Board adopting this resolution and it was explained by counsel that same would avoid redundant and unnecessary local reviews of plans and specifications for specialized infrastructure that can only be designed for one limited in size site, consists of limited in size infrastructure and is subject only to site plan review for a site having very limited design flexibility; as such, further

review would only unnecessarily extend the time for redundant plans review and before which construction could commence;

WHEREAS, this matter now having been further and fully considered by the Village Board under the Monroe County criteria the following findings and determinations are hereby made:

1. **THE NATURE AND SCOPE OF THE INSTRUMENTALITY SEEKING IMMUNITY.** The Village, an incorporated municipal entity with nearest territorial boundaries 800+/yds or so from the Project site, is the instrumentality seeking immunity from the Town's substantive, procedural and administrative local zoning, subdivision, planning and related building laws, rules and regulations with respect to the Project. The Project relates entirely to a State and County mandated improvement to the Village owned, maintained and operated water supply system. The Village has authority and experience similar to the Town respecting generally zoning, planning, subdivision and building review and permitting and in fact has a much better understanding of its own water supply system and the specialized requirements of this Project.
2. **THE ENCROACHING GOVERNMENT'S LEGISLATIVE GRANT OF AUTHORITY.** The Village's (the encroaching government) legislative grant of authority is as follows: within the territorial boundaries of the Village, the Village has comprehensive local zoning, planning, subdivision and building permitting authority similar to that of the Town. Its sovereign authority if exercised outside of Village limits extends to all such actions whatsoever comprising the Project. Moreover, by contract approved by both the Town and Village legislative bodies the Village has always maintained the Water supply facilities running from the Village along County Route 12 and serving Town residents within the district. The proposed facilities are to be constructed within that branch of the system.
3. **THE KIND OF FUNCTION OR LAND USE INVOLVED.** The kind of function or land use involved is classified as a public utility facility, ie a connection from the MWB 54" supply main to an existing Village public water distribution system located within 60 or so feet and within which a 435 sq. ft. +/- booster pump station will be located in order to supplement water pressure and provide rechlorination of the MWB water supply to be conveyed through the existing County Route 12 main to the elevated Village water supply central storage tank. It is therefore a municipal utility facility and as well somewhat of a specialty facility. The Village has expertise with water infrastructure including as to the Town Districts and limited outside users supplied by the system. The Village has more than sufficient ability and institutional experience to review this project just as it would any technically complex project. The Village has retained design professionals with specific expertise in review of this type of specialized uses and in fact has designed the entire Project and worked with the respective State and County Departments of Health regulatory and design personnel throughout relative to comments or suggestions relating to the proposed plans and specifications for the Project.

4. THE EFFECT LOCAL LAND USE REGULATION WOULD HAVE UPON THE ENTERPRISE CONCERNED. The Project layout as shown on Attachment “A” depicts the site improvements and infrastructure, as not only relatively minor in height, pump station structure and overall site footprint area, but reasonably located, i.e. within a few feet of the connection tap and main and all well within the established MWB easement area. This a more or less standard water supply infrastructure component and not a large residential development or commercial project with alternatives for design or aesthetics subject to the usual discretionary decisions and approvals of a local planning board. The project site is limited in lot area to within a long ago established easement area proximate to the MOB supply tap. The Town Code has no design or architectural standards applicable to this type of project. The submitted plans show two tree lined landscape screens relative to the adjacent residence and seemingly across County Route 12 and other neighborhood residences. The Project construction appears to involve less than a half (.50) acre or so of site disturbance and as built site footprint should not exceed .35 +/- or so acres exclusive of the treed landscaped perimeter. All Project infrastructure will be located on lands located within the existing MWB grants of easement; these are instruments of record that by their terms permit the Village of Phoenix to construct and operate a water system as an MWB permittee and permit the construction, installation and operation of water supply, transmission and distribution facilities. It is expected that the Project as proposed will comply with any (if any) applicable Town Code substantive requirements and wherever (and if) it may not the respective State and County Health Department reviews and approvals of system design supersede any conflicting local code requirement.

5. ALTERNATIVE LOCATIONS FOR THE FACILITY IN LESS RESTRICTIVE ZONING AREAS. The proposed use is a permitted use as of right within the subject zoning district in the Town of Schroepfel subject only to local site plan review. The site is limited to the Booster Pump station and related piping, pumping and chlorination equipment, in all a very small project on a very small site. There are no less restrictive zoning areas in the Town (i.e., this is an as of right permitted use) and there are no better alternative locations; this is especially so because this is the exact location of the pre-existing MWB tap/valve placed at the time of original main construction, between 1965 and 1968, with the a 15+/- foot connection outlet line and valve running from the fifty-four inch (54”) main all located within the MWB easement area near the intersect of Oswego County Route 12 with what is now Interstate 481, and precisely where it was then planned that a MWB-Phoenix/Schroepfel supply connection was to be made.

5. **THE IMPACT UPON LEGITIMATE LOCAL INTEREST.** The impact upon legitimate local interests are perhaps two fold, but negligible: it is undisputed that absent a recognition of the Village’s sovereign immunity, the Project would be subject to all of the zoning, subdivision, site and other land use and building regulations of the Town as administered by Town bodies and officials. As such, and playing devil’s advocate, arguably one impact is the loss of this layer of protection provided through the Town governmental unit that normally has oversight of local land use projects in the Town. However, this is in favor of a municipality with substantially similar zoning and

planning authority and experience, and with even more experience in the specific subject matter area of the Project (public water supply) and including relative to work within the County Route 12 right-of-way (where the existing Village line is located), and who in fact is also the Project developer. The resultant impact if and to the extent this Project is approved and constructed under Village planning and zoning jurisdiction is practically speaking, more or less non existent. The Village, regardless of a site location with the Town, has the expertise relative to the water supply system and the project has undergone a thorough specialized plans and specifications review with the NYS and Oswego County Departments of Health and with oversight by the County Department of Law. These agencies have comprehensive jurisdiction over public water system review and approval. Given the nature of the Project, confined site limitations and applicability of the NYS Uniform and Health Codes to construction and operation of the Project, very little is left with respect to discretionary site plan review determinations.

6. **ALTERNATIVE METHODS OF PROVIDING THE PROPOSED IMPROVEMENT.** Previously mentioned at paragraph #5 above are that alternative well sites and consideration of existing well upgrades were studied. The Village concluded after considerable study that there is no practical or better alternative than a new supply connection to MWB. Insofar as the Village's selection of a GWUDI remedy, the Village Board, after careful consideration of the alternatives, the respective viability and costs of each, and including specifically consideration that connection to a public water supply system would require ongoing payment for a water supply source that historically, water customers of the Village had not paid for, nevertheless determined that the best possible alternative for the variety of reasons detailed in its Type HI SEQRA determination resolution, would be to proceed with a water supply connection project to the existing MWB main.
7. **THE EXTENT OF THE PUBLIC INTEREST TO BE SERVED BY THE IMPROVEMENTS.** There is no question or dispute that the Project, effecting improvement to the existing facilities will be of benefit to all Village, Town District and outside users. The proposed Project has been mandated in order to address GWUDI conditions by replacing the existing non-compliant well water supply source with a tie in to the existing outlet valve and line connecting the MWB main transmitting Lake Ontario water from intake and treatment facilities in the City of Oswego, south through Oswego County to the Syracuse/ Onondaga County and surrounding area. The MWB public water supply source is compliant with all applicable legal and regulatory requirements and of the various alternatives, was and is the option preferred by the NYS and County Departments of Health.
8. **INTERGOVERNMENTAL PARTICIPATION IN THE PROJECT DEVELOPMENT PROCESS AND AN OPPORTUNITY TO BE HEARD.** Relative to permits and approvals and the like for the Project same consist of those relating to building, land use and zoning, land ownership and control of the Project site, and New York State and Oswego County review and approval of plans and specifications for water supply system infrastructure and work within the County highway right-of-way. This resolution has been adopted following a public hearing at the Village of Phoenix duly noticed for

this date and at which hearing all interested parties have been granted an opportunity to be heard. And as detailed in the Type HI determination resolution, there has been considerable public involvement and interest in the Project dating back to when the first quarterly GWUDI notices were issued in 2011. The NYSDEC under certain circumstances has jurisdictional oversight for water systems, but as to this Action has encouraged the MWB connection and agreed that provided the connection is timely made no review or permitting is required other than by MWB to modify its withdrawal permit (applicable if this will cause the MWB System intake component to meet or exceed present capacity limits). Likewise, notwithstanding the Village Board's Type II SEQRA determination NYSPRHP was early on contacted relative to inquiry on the issue of any relevant historical/cultural concerns and their response was in the negative. The proposed use is a permitted use as of right within this zoning district in the Town of Schroepel, subject only to site plan review. The infrastructure to be constructed and lands improved by the Project are located solely within easements of record in favor of the Onondaga County Water District, the MWB being the governing body of the district, retaining permitting control over third municipal/governmental water systems purchasing a potable water supply for transmission and distribution/sale to end use customers. MWB has agreed to grant the appropriate permitting to the Village of Phoenix. Review of water system infrastructure by the New York State Department of Health is for the purpose of determining applicable EPA and NYCRR water source, transmission and distribution regulatory, including Health Code, compliance and with some overlap (with the local building/codes review official) other regulatory requirements such as the New York State Uniform Code (Energy Conservation, Electric, Plumbing, Mechanical etc.) and building permit requirements. Although as a sovereign governmental unit the Village intends to proceed with exercise of jurisdiction to conduct its own site plan and plans and specifications review; work will not be commenced except upon notice to the Town of Schroepel; the other reviews and permitting approvals aforementioned are for the purpose of determining satisfaction of specific regulations and codes that are conditions precedent to permit issuance; thus while interpretation of such provisions may be required of a building or codes official, the discretionary decision making authority of a deliberative body is not involved and permitting is ministerial in nature; thus if the letter of the interpreted regulatory requirements are met a permit must be issued. Here, plans and specs review have been controlled by the State and County Departments of Health.

NOW THEREFORE, IT IS HEREBY RESOLVED AND DETERMINED, that the foregoing Premises ("Whereas") paragraphs hereof and the facts, findings and determinations stated in the SEQRA EAF and Type II determination resolution of 3/15/16 aforementioned are hereby incorporated in and made a part of these resolutions by reference; and it is hereby,

FURTHER RESOLVED, that the above and foregoing Premises are hereby adopted as the findings of the Village Board relevant to analysis of a balancing of the public interest as between the Village and Town, and the same is clearly weighted in favor and support of the Village retaining all of its land use, zoning, subdivision, site planning and building/codes permitting jurisdiction over the Project, and accordingly that this resolution constitutes and hereby effects a declaration of municipal sovereignty by the Village of Phoenix to supersede the

Town's zoning, planning, subdivision, and related land use and building/permitting laws, and that same is appropriate, justified, reasonable and necessary to achieve the Project's objectives and is in the public's best interests; and it is

FURTHER RESOLVED, That the Village Mayor, and/ or any other Village officer, employee or agent duly authorized, acting alone or as a body, as the case may be, is/are hereby directed to do, perform, and/ or execute and/ or deliver any and all or further such actions, determinations, documents, instruments, agreements, approvals and/ or permits as are expeditious, reasonable and necessary to effect the foregoing.

Upon motion made by Trustee Andrew Bittel and seconded by Trustee Eric Shaffer II, the foregoing resolution was put to a roll call, which resulted as follows: _

Ryan Wood, Mayor	Aye/yes
Eric Shaffer II, Trustee	Aye/yes
Jennifer Burgess, Trustee	Aye/yes
David Pendergast, Trustee	Aye/yes
Andrew Bittel, Trustee	Aye/yes

Resolution was adopted on the 3rd day of May 2016.

CERTIFICATION

I, the undersigned, Clerk-Treasurer of the Village of Phoenix, Oswego County, New York, do hereby certify: that the above is a true copy of the original resolution passed at a meeting of the Village of Phoenix Board of Trustees on May 3, 2016.

Roxanne Demo, Clerk-Treasurer

Motion to close the public hearing at 8:27pm was made by Trustee Bittel, seconded by Trustee Shaffer. All ayes.

Respectfully submitted,

Roxanne Demo

Village of Phoenix
Clerk/Treasurer